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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,200	12/29/2005	Daniel Schmid	4358-19	1226
23117	7590	08/27/2008	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			PERREAU, ANDREW D	
ART UNIT	PAPER NUMBER			
	3728			
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08/27/2008	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/550,200	SCHMID, DANIEL	
	<b>Examiner</b>	<b>Art Unit</b>	
	ANDREW PERREAU	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 December 2005.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-13 is/are pending in the application.  
 4a) Of the above claim(s) 4-13 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 21 September 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 9/21/05.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 52, 53, 55, 59, 61, 62, and 67 (all of which are listed in applicant's list of reference numerals within the specification). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claims 1-13 are objected to because of the following informalities: The word "characterised" appears to be a misspelling of the word -- characterized--. Appropriate correction is required.
4. Claim 1 is objected to because of the following informalities: The phrase "further characterised in that" is improper. Appropriate correction is required.
5. Claims 4-13 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim may not depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 4-13 have not been further treated on the merits.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is

considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation "two-component mixture", and the claim also recites "in particular for the manufacture of a dental mass" which is the narrower statement of the range/limitation. Appropriate correction is required.

Line 11 of claim 1 recites "preferably fluid or at least flowable" which is the narrower statement of the range/limitation. Appropriate correction is required.

Lines 3, 8 and 11 of claim 1 recite the term "preferably", which renders the scope of the claims indefinite. Appropriate correction is required.

Line 6 of claim 1 recites "at least one piston". However, subsequently in lines 7 and 9, only "the piston" is referenced (i.e. Does applicant mean each piston previously defined or now only one?). Appropriate correction is required.

Regarding claim 1, the phrase " powder-like component" renders the claims indefinite because the claim includes elements not actually disclosed (those

encompassed by " like"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

Lines 9 and 11-12 of claim 1 recites "a multi-component mixture". In line 2, a "two-component mixture" is referenced, which renders the scope of the claims indefinite. Appropriate correction is required.

Claim 1 recites the limitation "the initial condition" in lines 13-14. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation " the contents of the one receptacle" in line 16. There is insufficient antecedent basis for this limitation in the claim, as neither "contents" or any "receptacle" has been antecedently defined.

Claim 1 recites the limitation " the mixing capsule side". There is insufficient antecedent basis for this limitation in the claim. This limitation is also indefinite, as the mixing capsule is defined to encompass the ejection nozzle by definition, and accordingly the nozzle has no apparent "mixing capsule side".

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Aoyagi et al (20010053511).

Re claim 1, Aoyagi discloses a mixing capsule (fig 1) for receiving a two-component mixture, in particular for the manufacture of a dental mass with a preferably cylindrical container part 1 (fig 1) with an end-face 4 (fig 1) with an ejection nozzle 4a (fig 1), and with an open rear side lying opposite the end-face 4, having an opening for inserting a movable piston; a piston 3 (paragraph 21; fig 1) axially movable in the container part 1, wherein a first chamber 1a (fig 1) is defined between the end-face 4 of the container part 1 and the piston 3, said first chamber 1a serving the accommodation of a first, preferably powder-like component A (paragraph 19; fig 1) of a multi-component mixture; a second chamber 2 (fig 1) provided on the piston 3 for accommodating a second, flowable component B (paragraph 19; fig 1) of the mentioned multi-component mixture, a through-opening (paragraph 20, 21; fig 1) between the first 1a and the second 2 chamber, which in the initial condition is closed by a destructible wall 2a (paragraph 20, 21; fig 1) as well as a means 3a (paragraph 21; fig 1) in order to open the initially closed through-opening between the first 1a and the second 2 chamber and to transfer the contents of the one receptacle into the other chamber, further characterized in that the mixing capsule and the ejection nozzle 4a are designed of two pieces and are connectable to one another by way of a releasable fastening means (paragraph 22).

Re claim 2, Aoyagi discloses the ejection nozzle 4a on the mixing capsule side comprises a flange (portion at the exit of the end-face 4 as seen in fig 1 above the

nozzle) which may be sealingly connected to the mixing capsule.

Re claim 3, Aoyagi discloses the ejection nozzle 4a is capable of being stuck onto the mixing capsule with a flange (fig 1).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mukasa et al. (6,386,872), Kaneko et al. (2002/0098462), Abbey et al (3756390), Archer (3028052), Baumann et al (3731853), Dragan et al (5871355), Muhlbauer (5088830), Pueker et al (6543611), and Plaumann (6375460) disclose a mixing capsule.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW PERREAU LT whose telephone number is (571)270-5427. The examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P./  
Examiner, Art Unit 3728

/Bryon P. Gehman/  
Primary Examiner, Art Unit 3728